

250020

STATE OF SOUTH CAROLINA

(Caption of Case)

Arch Enterprises, LLC, d/b/a
McDonalds,

Complainant

v.

Palmetto Wastewater Reclamation LLC, d/b/a Alpine
Utilities,

Defendant.

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET
NUMBER: 2014 - 153 - S

(Please type or print)

Submitted by: John M.S. Hoefer

SC Bar Number: 2549

Address: P.O. Box 8416

Telephone: 803-252-3300

Columbia, South Carolina 29201-8416

Fax: 803-771-240

Other:

Email: jhoefer@willoughbyhoefer.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition☒ Request for item to be placed on Commission's Agenda expeditiously☐ Other:

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)			
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request	
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification	
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input checked="" type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation	
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement	
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment	
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter	
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response	
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery	
<input checked="" type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition	
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation	
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena	
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff	
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other: _____	
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest		
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit		
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report		

Print Form

Reset Form

WILLOUGHBY & HOEFER, P.A.

ATTORNEYS & COUNSELORS AT LAW

930 RICHLAND STREET

P.O. BOX 8416

COLUMBIA, SOUTH CAROLINA 29202-8416

RECEIVED

2014 APR 11 AM 11:45

SC PUBLIC SERVICE
COMMISSION

AREA CODE 803
TELEPHONE 252-3300
TELECOPIER 256-8062

MITCHELL M. WILLOUGHBY
JOHN M.S. HOEFER
RANDOLPH R. LOWELL**
TRACEY C. GREEN
BENJAMIN P. MUSTIAN**
ELIZABETH ZECK*
ELIZABETHANN LOADHOLT CARROLL
CHAD N. JOHNSTON
JOHN W. ROBERTS
ANDREW J. D'ANTONI

April 11, 2014

*ALSO ADMITTED IN TX

**ALSO ADMITTED IN THE DISTRICT OF COLUMBIA

VIA HAND-DELIVERY

The Honorable Jocelyn D. Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29211

RE: Arch Enterprises, LLC d/b/a McDonalds v. Palmetto Wastewater Reclamation
LLC d/b/a Alpine Utilities; Docket No. 2014-153-S

Dear Mrs. Boyd:

Enclosed for filing please find the original and one (1) copy of the **Motion to Dismiss on an Expedited Basis** of Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities ("PWR") in the above-referenced matter. By copy of this letter, we are serving the Complainant and the Office or Regulatory Staff with this document and enclose our certificate of service to that effect.

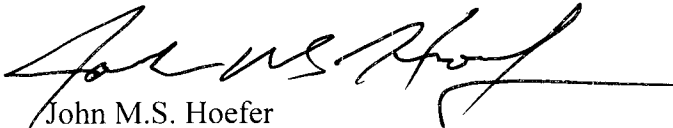
As noted in the attached motion and docket cover sheet, PWR requests that this matter be addressed on an expedited basis due to the fact that the Complainant has been and is receiving service from PWR without having established an account with PWR or having paid for such service, but PWR is prevented from exercising its right to disconnect as a result of the complaint.

I would appreciate your acknowledging receipt of this Motion and Certificate by date-stamping the extra copy that is enclosed and returning it to me via my courier.

If you have any questions or if you need any additional information, please do not hesitate to contact me. With best regards, I am

Sincerely,

WILLOUGHBY & HOEFER, P.A.


John M.S. Hoefer

JMSH/sw
enclosures

The Honorable Jocelyn D. Boyd

April 11, 2014

Page 2

cc: Kathleen M. McDaniel, Esquire
Honorable C. Dukes Scott
Nanette S. Edwards, Esquire
Jeffrey M. Nelson, Esquire
Florence P. Belser, Esquire

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2014-153-S

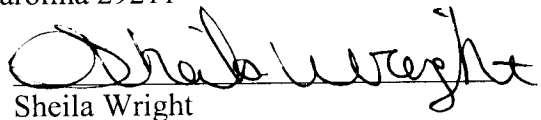
IN RE:)
)
Arch Enterprises, LLC, d/b/a McDonalds)
)
Complainant)
)
v.)
)
Palmetto Wastewater Reclamation LLC,)
d/b/a Alpine Utilities.)
)
Defendant.)
_____)

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day one (1) copy of a **Motion to Dismiss on an Expedited Basis** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Kathleen M. McDaniel, Esquire
Callison, Tighe & Robinson, LLC
P.O. Box 1390
Columbia, SC 29202-1390

Honorable C. Dukes Scott
Nanette S. Edwards, Esquire
Jeffrey M. Nelson, Esquire
Florence P. Belser, Esquire
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, South Carolina 29211


Sheila Wright

Columbia, South Carolina
This 11th day of April 2014.

RECEIVED

BEFORE

2014 APR 11 AM 11:46

THE PUBLIC SERVICE COMMISSION
SOUTH CAROLINA

DOCKET NO. 2014-153-S

IN RE:)	
)	
Arch Enterprises, LLC, d/b/a McDonalds)	
)	
Complainant)	MOTION TO DISMISS ON AN
)	EXPEDITED BASIS
v.)	
)	
Palmetto Wastewater Reclamation LLC,)	
d/b/a Alpine Utilities.)	
)	
Defendant.)	
_____)	

Palmetto Wastewater Reclamation LLC, d/b/a Alpine Utilities ("PWR" or "Company"), pursuant to 10 S.C. Code Regs. R. 103-829 (2012), hereby moves the Public Service Commission of South Carolina ("Commission") to dismiss the April 8, 2014, complaint ("Complaint") of Arch Enterprises, LLC ("Arch") in the above-captioned matter on the grounds that (1) the Complaint has not been filed by a customer of a public utility and is therefore not reviewable ; (2) alternatively, if the Complaint is reviewable by the Commission, it establishes on its face that PWR is entitled to discontinue service under Commission regulations; and (3) also alternatively, if the Complaint is reviewable by the Commission, it fails to state facts sufficient to constitute a claim upon which relief may be granted because the relief sought constitutes retroactive ratemaking which is prohibited by law. PWR respectfully requests that the Commission give the within motion expedited review.

[Signature]

In essence, Arch's Complaint is an effort to use the Commission's complaint process to (1) avoid disconnection in circumstances where it is undisputed that Arch has used PWR's service for ten months without having established an account with PWR and without having paid PWR for that service; and (2) avoid paying the previously approved rates set by this Commission for Arch's prior and proposed future use of PWR's service. By this motion, PWR requests that the Commission relieve it of the burden of incurring the expense of addressing these contentions on the merits by summarily dismissing the Complaint. In order to prevent further loss to PWR, which is occasioned by its current inability to disconnect service in circumstances where it has not and is not being paid for such service at previously approved rates, PWR requests that the Commission rule on this motion on an expedited basis and without hearing or oral argument. In support hereof PWR would respectfully show as follows:

I. BACKGROUND

A. THE RBF COMPLAINT¹

On or about April 1, 2013, RBF Enterprises LLC ("RBF") filed with this Commission a complaint that was assigned Docket Number 2013-119-S in which it challenged PWR's right to charge for sewer service in accordance with the rate schedule approved by this Commission in its Order No. 2013-3(A) issued January 11, 2013, in Docket No. 2012-94-S. On April 10, 2013, a Commission Hearing Examiner issued a directive holding the RBF complaint in abeyance pending (1) the retention of counsel by RBF to represent it in accordance with 10 S.C. Code Regs. 103-

¹ In view of Arch's reference to and reliance upon another complaint pending before the Commission, which involves the entity which is the PWR customer of record at the service premises in question, it is necessary that PWR address that matter first in order to give context to the pertinent background for the instant motion.

805(B); and (2) completion of an investigation by the Office of Regulatory Staff (“ORS”) regarding PWR’s commercial rates which had been ordered by the Commission in Docket No. 2012-94-S.² An appearance of counsel was entered for RBF on or about April 11, 2013,³ and on June 17, 2013, ORS filed with the Commission the results of its investigation of rates being charged by PWR to commercial customers as a result of Order No. 2013-3(A). *Inter alia*, ORS reported to the Commission (1) that PWR was earning less total annual revenue from commercial customers than had been expected as a result of the rate increase approved in Order No. 2013-2(A); (2) that utilization of the contributory unit wastewater loading design guidelines set out in Appendix A to 25 S.C. Code Regs. 61-67 as approved in Order No. 2013-3(A) is a reasonable method of designing commercial customer rates; (3) and that PWR has the flexibility to adjust the loading factors under Appendix A to R. 61-67 as it designs commercial rates. Notably, the ORS report did not conclude that PWR was charging any commercial customer at a rate not approved by the Commission.

B. THE ARCH COMPLAINT

According to the Complaint, in July of 2013, Arch purchased from RBF “the rights to operate this McDonalds store.”⁴ The Complaint further asserts that “the crux of RBF’s Complaint was [PWR’s] use of [the] unit contributory loading guidelines.” Nonetheless, Arch notes that the Commission has approved for Palmetto Utilities, Inc. (“PUI”) in Order No. 2013-660, Docket No.

² See Commission Directive March 27, 2013, Order No. 2013-193, May 3, 2013.

³ Albeit different attorneys of record are involved, the same law firm that entered an appearance on behalf of RBF in accordance with the Hearing Examiner Directive also represents Arch in the instant complaint matter.

⁴ Thus, on the face of the Complaint, PWR’s service is no longer being utilized by RBF, but by Arch.

2013-42-S, a rate design using the unit contributory guidelines with a single modification (i.e., an adjustment to the per car loading factors for fast-food restaurants with drive-thru facilities) and that PWR proposes the same rate design and modification in its application pending before the Commission in Docket No. 2014-69-S. By its Complaint, Arch seeks an order of the Commission adopting the PUI rate design for both the service Arch has been receiving (without PWR's permission) since July of 2013 and for future service to Arch.⁵ Although Arch asserts that it "disputes the past due balance" of \$59,450.40 reflected in the last of the disconnection notices attached to the Complaint, it fails to assert any basis for disputing the balance other than its contention that it should be charged PWR's for service under a rate design approved by the Commission for another utility (i.e., PUI). In describing the amount of the past due balance sought to be collected by PWR, Arch inexplicably fails to apprise the Commission that the amount claimed to be due from Arch by PWR, \$32,480.00, is based upon the time period that Arch has admitted using PWR's service without having established an account with PWR or remitting payment for such service under the rates previously approved by the Commission.⁶ Arch seeks to have the Commission issue an order "halting the disconnection of sewer service" to the premises it is

⁵ As acknowledged in the Complaint, the intervenors in Docket No. 2013-42-S opposed this rate design and have appealed the Commission's order in this regard to the Supreme Court. As also reflected in the Complaint, one of the principals of Arch is a principal of J-Ray, Inc., an intervenor in Docket No. 2013-42-S. PWR further notes that those intervenors are also represented by the same law firm representing RBF in its complaint matter described hereinabove and Arch in the instant complaint.

⁶ Attached hereto and incorporated herein by reference as Motion Exhibit "A" is a copy of a series of electronic mail messages between counsel for Arch and counsel for PWR which make abundantly clear that PWR contends that Arch is indebted to PWR in the amount of \$32,480.00 for Arch's use of PWR's service since July of 2013, based upon PWR's previously approved rates. These emails also make clear that PWR contends that the remaining unpaid balance is an obligation of RBF based upon its use of PWR's services from March of 2013 through June of 2013 for which PWR has also not been paid.

occupying and allowing it to pay for previously used services based upon PUI's – and not PWR's – previously approved rates.

II. ARGUMENT

A. The Complaint Should Be Summarily Dismissed Because It Demonstrates On Its Face That Arch Is Not A Customer Of PWR And It Is Therefore Not Entitled To File A Complaint Regarding PWR

Under 10 S.C. Code Regs. 103-516, only “complaints by customers” are required to be investigated by a sewer utility. Further, 10 S.C. Code Regs. R. 103-538 (2012) provides for ORS review of “customer complaints”.⁷ A “customer” is defined by 10 S.C. Code Regs. 103-502.2 (2012), as “[a]ny person, firm, partnership or corporation ... being **supplied** with service by a utility under the jurisdiction of this Commission.” The RBF complaint pending in Docket No. 2013-119-S establishes that RBF has been the customer of record to which PWR has agreed to supply sewer service at 600 St. Andrews Road. The Complaint does not allege that Arch – a different legal entity than RBF -- has applied to establish an account for PWR to supply it with sewer service at this location (although Motion Exhibit “A” demonstrates that Arch has made such an application).⁸ To

⁷ Arch states that it has “been in regular contact with ORS to seek assistance with resolving this matter.” PWR submits that Arch is not entitled to any “assistance” from ORS as ORS is only required to investigate **customer** complaints. See R. 103-538.B. Since Arch is not a customer of PWR – which is established on the face of the Complaint – ORS has no obligation to even make an investigation. Notwithstanding this, the ORS has in fact investigated the Complaint and has also “been in regular contact” with PWR. The fact that ORS has not directed that PWR desist from its effort to discontinue services at the premises now occupied by Arch suggests to PWR that ORS may have concluded that Arch is not a customer entitled to complain and/or does not believe it to be in the public interest to assist an entity that has used a jurisdictional sewer utility’s service without permission and without payment for some ten months and seeks to use the complaint procedures of this Commission to relieve that entity from the requirement that it pay the previously approved rates of the utility before it may establish an account. Cf. R. 103-535.L.

⁸ PWR submits that the reason Arch has not asserted that it has applied to PWR to establish service is that it recognizes that its failure to pay the amount claimed due by PWR entitles PWR to refuse such an application. See 10 S.C. Code Regs. 103-535.L. Thus, it is necessary that Arch implicitly assert that the RBF

the contrary, in a carefully worded “Statement of Facts” Arch alleges only that RBF was “the former operator of the McDonalds store” at 600 St. Andrews Road” and that Arch “acquired the rights to operate this McDonalds store” in July of 2013. Thus, the Complaint establishes on its face that the only legal entity that is PWR’s customer of record at the service location is not the same legal entity that seeks relief from this Commission in the instant matter.⁹

PWR submits that the definition of a “customer” under R. 103-502.2 as being a person or entity that is being **supplied** with service by a utility necessarily contemplates that the utility has agreed to provide service, not merely that service is being received by a person or entity. This is borne out in the Commission’s regulations providing that to establish an account for the supply of sewer utility service, the person or entity seeking that service must apply to the utility do so and the utility must accept the application. *See* 10 S.C. Code Regs. 103-534.A (2012).¹⁰ Other Commission regulations also bear out that a customer is a person or entity which has communicated with a sewer utility a desire for service and provided necessary information in order to allow the sewer utility to discharge the customer service duties imposed on it by the Commission. *See, e.g.* 10 S.C. Code Regs. RR.103-530.B (notification to customers of proposed rate increases), 103-531 (providing for

account with PWR is Arch’s account.

⁹ Arch also appears to assert that because RBF did and Arch does business as “McDonalds,” this in some manner places Arch in the position of claiming the customer status formerly held by RBF. Such an assertion would be patently without merit given the fact that two legal entities exist, only one of which has established an account with PWR under 10 S.C. Code Regs.103-534 (2012). However, if Arch can be accorded such status, it would be responsible for the entire amount of unpaid charges at the service location based on PWR’s previously approved rate.

¹⁰ As reflected in the email correspondence to Arch’s counsel attached as Exhibit “A,” PWR is unwilling to establish an account with or to continue providing service to Arch in view of the fact that there is an outstanding balance for service provided to Arch at the premises it admits to having occupied since July of 2013. This indebtedness is based upon PWR’s previously approved rates which cannot now be disputed as a

customer deposits intended to guarantee payment of bills for service in certain circumstances), 103-532 (requirements for customer bill forms), and 103-535.L (providing that an applicant for service may be denied service until an undisputed bill for service previously supplied the applicant is paid).

The Complaint does not – indeed cannot -- assert that Arch has made an application for service that PWR has accepted. To the contrary, Arch implicitly asserts that the RBF account is Arch's account. In fact, RBF and Arch are two different legal entities, no agreement exists for PWR to supply sewer service to Arch, and it is therefore not a customer entitled to complain about PWR's notice of intent to disconnect service to premises where there is no active customer of record.

B. The Complaint Establishes On Its Face That PWR Is Entitled To Disconnect Service Even If Arch Is Deemed To Be An Applicant For Service

PWR submits that, at best, Arch can be considered an applicant for service at this service location which is indebted to PWR for the value of the services it has been using since July 2013 under previously approved rates . Rather than conferring on Arch the ability to complain about PWR, such applicant status would only allow Arch to become a customer entitled to receive service after having paid the indebtedness arising under previously approved rates. *See* 10 S.C. Code Regs. R. 103-535.L (2012). This Arch has refused to do. *See* Motion Exhibit "A."

In that light, the gravamen of the relief sought by Arch is simply this: the Commission should treat Arch as a customer of record which has a legitimate dispute over the rates charged by a jurisdictional utility. As demonstrated on the face of the Complaint, however, the real crux of this matter is that Arch has been impermissibly receiving sewer service from PWR since July of 2013 without having paid for that service and now seeks to have this Commission endorse that conduct by

matter of law. See discussion in Part II.B and Part II.C, *infra*.

recognizing Arch as a customer entitled to litigate its contention that it was entitled to receive (and in the future receive) service at a rate less than that previously approved by the Commission. As a matter of law, Arch would not be entitled to that relief even if it is considered an applicant for service (or a customer).

A sewer utility is not permitted to charge a rate different than that approved by the Commission. *See* 10 S.C. Code Ann Regs. 103-533 (2012). Moreover, this Commission does not have the authority to retroactively reduce charges imposed under a previously approved rate. *See SCE&G Co. v. PSC*, 275 S.C. 487, 491, 272 S.E2d 793, 795 (1980) (holding that “[t]he Commission has no more authority to require a refund of monies collected under a lawful rate than it would have to determine that the rate previously fixed and approved was unreasonably low, and that the customers would thus pay the difference to the utility”). Only upon a determination by the Commission that a previously approved rate is improper may the Commission “**thereafter**” direct that a different rate be charged. *See* S.C. Code Ann. §58-5-290 (1976).

In light of the foregoing, consideration of this complaint by the Commission on the merits will in effect sanction an unauthorized use of utility service, limit a jurisdictional utility’s ability to refuse or discontinue service under the circumstances expressly permitted by R. 103-535.L, permit a non-customer to retroactively challenge the lawfulness of rates for service that it has used without having a legal right to do so, and permit a non-customer to challenge the lawfulness of rates going forward. PWR respectfully submits that the Commission should refuse to do so by granting the instant motion and forthwith dismissing the Complaint.

C. The Complaint Fails To State Facts Sufficient To Constitute A Claim Upon Which Relief May Be Granted

Even assuming that Arch is entitled to bring this Complaint as a customer (or even as an applicant), the Complaint should nonetheless be dismissed because it fails to state facts sufficient to constitute a complaint cognizable under S.C. Code Ann. § 58-5-270 (Supp. 2013). Arch has not alleged any fact demonstrating that PWR has done anything prohibited by Commission regulations, or omitted to do anything required by Commission regulations, that would entitle Arch to relief. *Cf.* Rule 12(b)(6), SCRC. To the contrary, the sole allegations of the Complaint are that PWR has given notice of its intent to disconnect service to the premises now occupied by Arch. PWR is entitled to disconnect service inasmuch as Arch is not a customer of PWR and has refused to satisfy an indebtedness for service it has received at the premises under previously approved rates. Rather than being proscribed by Commission regulations, PWR is expressly authorized to discontinue service in these circumstances. *See* RR. 103-534 and 103-535.L, *supra*. Further, the relief sought by Arch (the ability to pay for service received and to be received at a rate other than the previously approved rate) cannot, as a matter of law, be granted by the Commission. *See SCE&G Co. v. PSC*, *supra* and §58-5-290, *supra*. Accordingly, the Complaint is deficient on its face and should be dismissed.

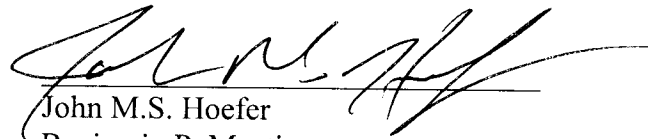
III. REQUEST FOR EXPEDITED REVIEW

PWR requests that the within Motion be considered on an expedited basis without oral argument so that PWR may have the opportunity to be promptly relieved from the requirement of 10 S.C. Code Regs. 104-538.A that it continue to provide service to an entity that (1) is not a customer; (2) has not satisfied the requirements to become a customer (including payment of indebtedness

arising out of Arch's unauthorized use of PWR's service for ten months); and (3) seeks to have the Commission unlawfully reduce PWR's previously approved rate on a retroactive and prospective basis. PWR submits that these circumstances warrant expedited consideration so as to limit the continuing harm to PWR of providing service for no compensation and the expense being incurred by PWR to enforce its rights as a jurisdictional sewer utility.

IV. CONCLUSION

For the foregoing reasons, Defendant respectfully requests that Arch's Complaint be dismissed without more.



John M.S. Hoefer

Benjamin P. Mustian

WILLOUGHBY & HOEFER, P.A.

Post Office Box 8416

Columbia, South Carolina 29202-8416

803-252-3300

Attorneys for Defendant/Respondent

Columbia, South Carolina

This 11th day of April, 2014

From: John Hoefer
To: "Reece Williams"
Cc: jnelson@regstaff.sc.gov; Kathleen McDaniel
Subject: RE: Wastewater Service to 600 St. Andrews Boulevard, Columbia, SC, 29210 by Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities
Date: Thursday, April 03, 2014 5:33:00 PM

Dear Reece:

I am advised that the amount due for the arrearage is \$32,480, calculated as follows:

Period: July 1, 2013 – April 1, 2014

Rate: \$29 per single family equivalent per month

Single Family Equivalents: 112.1

Equivalency Factors: Cars – 1,055. This car count is based upon the figure provided by Arches, LLC of 26,365 cars per month plus a 20% peaking factor. 1,055 cars X 40 gallons = 42,200 gallons

Seats – 66 seats X 40 gallons = 2640 gallons.

42,200 gallons + 2,640 gallons = 44,840 gallons

Equivalency Calculation: 44,840 divided by 400 gallons per SFE = 112.1 SFEs

Monthly Bill: 112.1 SFEs X \$29 = \$3,248.00

Arrearage: \$3,248.00 X 10 = \$32,480

Please let me know if you have any questions, believe that there is an error in the calculation, or have any questions.

John

From: Reece Williams [mailto:ReeceWilliams@callisontighe.com]
Sent: Thursday, April 03, 2014 5:15 PM
To: John Hoefer
Cc: jnelson@regstaff.sc.gov; Kathleen McDaniel
Subject: RE: Wastewater Service to 600 St. Andrews Boulevard, Columbia, SC, 29210 by Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities

Dear John,

Thank you. Since your client does not know the amount it claims to be due, it is impossible at this time to respond. As stated, my client is willing to pay the correct arrearage determined to be due and is happy to submit this to Jeff Nelson through mediation.

Best wishes, Reece

From: John Hoefer [<mailto:JHoefer@Willoughbyhoefer.com>]
Sent: Thursday, April 03, 2014 4:56 PM
To: Reece Williams
Cc: jnelson@regstaff.sc.gov; Kathleen McDaniel
Subject: RE: Wastewater Service to 600 St. Andrews Boulevard, Columbia, SC, 29210 by Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities

Reece – Thank you for your courteous voicemail. I appreciate your candor.

I do not know what amount is due and assume that my client will be talking with yours about it. I do understand that there are questions about the number of cars served and the number of seats in the location. Again, I assume that my client will be talking with your client about that.

Regarding your other points, it seems reasonable to me that if your client wants to establish an account to receive service going forward, it will be necessary that my client be made whole for the service it has previously received but for which my client has not been paid. As my earlier email indicates, I believe my client is calculating the arrearage using its approved rates based on occupancy of the premises by your client since July 1, 2013. Again, I believe my client will be discussing with your client the car and seat counts. That information should shortly be available.

If your client is not going to be willing to pay for the service already provided to it from July 1, 2013, in accordance with my client's authorized rate schedule, I can see no reason why my client should, or would want to, provide service to your client. I respectfully disagree that this is a complicated situation. It is clear that your client has, for some ten months, been receiving services for which it failed to establish an account and failed to pay. Any consequences arising from my client's refusal to provide service under these circumstances would not, in my opinion, be attributable to my client.

My client stands ready and willing to resolve the matter in accordance with the foregoing. It will honor its agreement to extend the time period for your client to establish an account in accordance with the foregoing until Wednesday at 5:00 p.m. I hope that it will avail itself of that opportunity.

John Hoefer

From: Reece Williams [<mailto:ReeceWilliams@callisontighe.com>]
Sent: Thursday, April 03, 2014 4:33 PM
To: John Hoefer
Cc: jnelson@regstaff.sc.gov; Kathleen McDaniel
Subject: RE: Wastewater Service to 600 St. Andrews Boulevard, Columbia, SC, 29210 by Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities

Dear John,

We have no idea what your client claims to be due as arrearage. The undated termination notice from Palmetto Utilities states that as of March 24, 2014 the amount was \$59,450.40. I suggest that this is incorrect. Jeff Nelson of ORS has offered to mediate this issue which I am happy to do. However, it is unacceptable to proceed with negotiations under a refusal to establish an account and continued threat of termination of service. Once again, allow me to observe that, in my view, mistakes have been made by both parties, this is a very complicated situation and terminating the service of this business would have serious consequences. My client stands willing and ready to resolve the matter.

Sincerely, Reece

From: John Hoefer [<mailto:JHoefer@Willoughbyhoefer.com>]
Sent: Thursday, April 03, 2014 4:11 PM
To: Reece Williams
Cc: jnelson@regstaff.sc.gov; Kathleen McDaniel
Subject: RE: Wastewater Service to 600 St. Andrews Boulevard, Columbia, SC, 29210 by Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities

Reece – Thank you for confirming the identity of your client.

Just to clarify one point, please advise your client that in order to establish an account, the

arrearage will have to be satisfied at that time. If the arrearage cannot be satisfied at that time PWR would not be willing to establish an account with your client. The amount of arrearage will relate only to the period of time that your client has been utilizing PWR's service.

Thanks.

John Hoefer

From: Reece Williams [<mailto:ReeceWilliams@callisontighe.com>]
Sent: Thursday, April 03, 2014 3:56 PM
To: John Hoefer
Cc: jnelson@regstaff.sc.gov; Kathleen McDaniel
Subject: RE: Wastewater Service to 600 St. Andrews Boulevard, Columbia, SC, 29210 by Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities

Dear John,

Your courtesy is much appreciated. Yes, I am informed that it is Arches Enterprises, LLC. Assuming that your client allows establishment of an account we will cooperate with your client in determining the amount of arrearage due making arrangements to pay the amount. Thank you for your continuing assistance in resolving this matter.

Sincerely, Reece

From: John Hoefer [<mailto:JHoefer@Willoughbyhoefer.com>]
Sent: Thursday, April 03, 2014 3:40 PM
To: Reece Williams
Cc: jnelson@regstaff.sc.gov; Kathleen McDaniel
Subject: RE: Wastewater Service to 600 St. Andrews Boulevard, Columbia, SC, 29210 by Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities

Dear Reece: My apologies for the delay in getting back to you.

I am informed that an entity named "Arches, LLC" has requested establishment of an account for sewer service at the address listed above? Is that your client?

If so, PWR is amenable to a further extension until 5:00 p.m. on Wednesday, April 9, 2014, for that entity to establish an account with PWR-Alpine in accordance with the terms of its approved rate schedule and to satisfy the arrearage on the account for the time period it has been using the

wastewater service of my client. My client informs me that that it has been advised by Arches LLC that this time period began to run on July 1, 2013.

If the foregoing is not accomplished by that new extended deadline, PWR will disconnect the service. Please let me know if you have any questions.

Thank you for your assistance.

John

From: Reece Williams [<mailto:ReeceWilliams@callisontighe.com>]
Sent: Thursday, April 03, 2014 10:30 AM
To: John Hoefer
Cc: jnelson@regstaff.sc.gov; Kathleen McDaniel
Subject: RE: Wastewater Service to 600 St. Andrews Boulevard, Columbia, SC, 29210 by Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities

Dear John,

Thank you again for your courtesy in extending time for the resolution of this account until April 6. I am now informed that my client has applied to Palmetto/Alpine for transfer of service to a new entity. This appears to be in progress. We now need to determine the amount of past charges and a manner of payment. I will be grateful if your client will agree to extend the date for termination of service beyond Sunday, April 6.

Sincerely, Reece

Best wishes, Reece

From: John Hoefer [<mailto:JHoefer@Willoughbyhoefer.com>]
Sent: Tuesday, April 01, 2014 5:10 PM
To: Reece Williams
Cc: jnelson@regstaff.sc.gov
Subject: RE: Wastewater Service to 600 St. Andrews Boulevard, Columbia, SC, 29210 by Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities

Reece – I am following up with you on the emails below concerning the above-referenced matter.

If you have been able to identify the entity that is receiving wastewater service from PWR at the above-referenced location, please let me know that information.

If the entity currently receiving service is still RBF Enterprises, LLC, PWR will send a 30 day disconnection notice to it based upon non-payment for service and proceed thereafter in accordance with the PSC rules.

On the other hand, if the entity receiving service is not RBF Enterprises, LLC, PWR intends to disconnect service at this location on April 6th unless an account is established by that entity with PWR and all account arrearages attributable to its use of the service are satisfied. It is PWR's position that where it has no customer of record, it has no obligation to serve. PWR certainly hopes that disconnection will not become necessary. However, as I am certain you can understand, PWR cannot continue providing service to a location where there is no customer of record – particularly in light of the fact that no payment has been made or received for service to the address since January of 2013.

Please let me hear from you before April 6th.

Best regards,

John Hoefer

From: Reece Williams [<mailto:ReeceWilliams@callisontighe.com>]

Sent: Wednesday, March 26, 2014 3:41 PM

To: John Hoefer

Subject: RE: Wastewater Service to 600 St. Andrews Boulevard, Columbia, SC, 29210 by Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities

Dear John,

Thank you for granting an extension. I do not know the name of the entity operating at this location but will get that for you.

Best to you, Reece

From: John Hoefer [<mailto:JHoefer@Willoughbyhoefer.com>]

Sent: Wednesday, March 26, 2014 3:29 PM

To: Reece Williams

Subject: RE: Wastewater Service to 600 St. Andrews Boulevard, Columbia, SC, 29210 by Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities

Reece – I have spoken with PWR. Based on its understanding that the recipient of the services at the above location is now J-Ray, Inc., and not RBF Enterprises, LLC (**please advise me immediately if you do not believe this to be the case**), PWR has directed that I inform you as follows:

1. PWR is willing to permit J-Ray, Inc. ten (10) days from today, or until April 6, 2014, within which to contact PWR at the previously provided telephone number, establish a service account in its name for the above-referenced location, and **satisfy that portion of the arrearage stated in the disconnection notice attributable to J-Ray's use of PWR's service**. If this is not done, PWR will disconnect service at this location.
2. You are correct that the disconnection notice erroneously referenced Palmetto Utilities, Inc. However, this is irrelevant now that PWR understands that it is J-Ray that is receiving PWR's service (again, advise me if that is not the case). Because J-Ray has no account with PWR entitling it to receive service at this location, it is not a customer under PSC regulations and no notice is required for PWR to disconnect.
3. The pendency of the complaint of your other client (RBF Enterprises, LLC) does not in any way preclude PWR from disconnecting service at the above-referenced location for at least two reasons. First, if RBF Enterprises, LLC, is no longer a customer of PWR at this location but J-Ray is, there is no basis for RBF Enterprises, LLC to assert that its prior complaint involves the current circumstances under which J-Ray is receiving service without an established account or payment. Second, even if RBF Enterprises, LLC were still the PWR customer at this location, the fact of its complaint did not authorize it to withhold all payment from PWR. My understanding is that no payment has been received for PWR's service to this location since January of 2013, which is 4 months before the complaint was filed. Further, if RBF Enterprises, LLC, is no longer a customer of PWR, its complaint at the PSC would be moot since the amount in dispute will never have been paid and there would be no effective action that the PSC could take to require that RBF Enterprises, LLC, to do so. In that event, PWR will pursue a judicial remedy against RBF Enterprises, LLC to the extent necessary.

If you have any questions regarding the foregoing, please do not hesitate to contact me.

John Hoefer

From: Reece Williams [<mailto:ReeceWilliams@callisontighe.com>]

Sent: Wednesday, March 26, 2014 1:48 PM

To: John Hoefer

Subject: RE: Wastewater Service to 600 St. Andrews Boulevard, Columbia, SC, 29210 by Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities

Dear John,

Thank you for your reply on behalf of Palmetto Wastewater

Reclamation LLC d/b/a Alpine Utilities. This is at best confusing since the bill I forwarded to you was rendered by Palmetto Utilities, a different company. I will do my best to reconcile the issues as soon as possible. Meanwhile, I respectfully request that your client continue service beyond today. Your client should understand that termination of service will have drastic consequences for this business.

Sincerely, Reece

From: John Hoefer [<mailto:JHoefer@Willoughbyhoefer.com>]
Sent: Wednesday, March 26, 2014 12:46 PM
To: Reece Williams
Subject: Wastewater Service to 600 St. Andrews Boulevard, Columbia, SC, 29210 by Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities

Reece:

I am following up on the voicemail message I just left for you regarding the above-referenced matter.

In our conversation earlier today, you indicated that the March 24, 2014, Notice of Intent to Disconnect Sewer Services (Notice) at the above-referenced location was received by your client J-Ray, Inc. Based upon that information, Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities (PWR) would understand that J-Ray, Inc. is operating the McDonald's restaurant at this location.

PWR has no record of J-Ray, Inc. being its customer, at this, or any other location. If J-Ray, Inc. desires to be PWR's customer at this location, J-Ray, Inc. must contact PWR at 803-699-2422 to establish a customer account and arrange to satisfy the arrearage on the account referenced in the Notice -- at least for the period of time that J-Ray, Inc. has received the services.

If J-Ray, Inc. does not establish an account and address the arrearages, PWR will take the position that J-Ray, Inc. is not its customer, that PWR has no obligation to provide service at the location, and that PWR is entitled to immediately disconnect service.

If it is the position of J-Ray, Inc. that some other entity is responsible for the account in whole or in part, it should make that fact known to PWR immediately and inform PWR of the identity of the responsible person or entity.

If PWR is not contacted by the close of business today regarding this matter, its intent will be to

terminate service immediately as it will have no identifiable customer entitled to receive notice of disconnection under the PSC rules. As I mentioned in our conversation, I am advised by PWR that no payment has been made for sewer service provided at the location referenced above since January of 2013.

Please contact me if you have any questions. Thank you.

John M.S. Hoefer, Esquire
Willoughby & Hoefer, P.A.
930 Richland Street
Post Office Box 8416
Columbia, South Carolina 29202-8416
Telephone #: (803) 252-3300
Facsimile #: (803) 771-2410
E-mail address: jhoefer@willoughbyhoefer.com

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